

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
International Business Reply Service  
Competitive Contract 3 (MC2011-21)  
Negotiated Service Agreement

Docket No. CP2018-193

PUBLIC REPRESENTATIVE COMMENTS ON  
NOTICE OF THE UNITED STATES POSTAL SERVICE FILING OF  
A FUNCTIONALLY EQUIVALENT INTERNATIONAL BUSINESS REPLY SERVICE  
COMPETITIVE CONTRACT 3 NEGOTIATED SERVICE AGREEMENT  
(April 4, 2018)

## I. INTRODUCTION

The Public Representative hereby provides comments pursuant to the Commission's notice initiating this docket.<sup>1</sup> In that notice, the Commission established the above-referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of Filing a Functionally Equivalent International Business Reply Service Competitive Contract 3 (IBRS 3) Negotiated Service Agreement.<sup>2</sup> The Notice includes a public (redacted) version of the IBRS 3 contract (Contract), a Certification of Compliance with 39 U.S.C. § 3633(a) as required by 39 C.F.R. § 3015.5(c)(2), and a redacted copy of Governors' Decision No. 08-24 as attachments along with a redacted supporting financial model which was filed separately as an Excel file. Unredacted versions of redacted documents were filed separately under seal.

Prices and classifications "not of general applicability" for IBRS contracts were previously established by Governors' Decision No. 08-24.<sup>3</sup> In Order No. 684, the

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<sup>1</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 30, 2018.

<sup>2</sup> Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 29, 2018 (Notice).

<sup>3</sup> See Docket Nos. MC 2009-14 and CP2009-20, Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, December 24, 2008. A redacted copy of

Commission approved the Postal Service's request to add IBRS 3 negotiated service agreements to the competitive product list and designated a Baseline Agreement to be used to determine the functional equivalence of subsequent agreements that the Postal Service requests to add to this product.<sup>4</sup> IBRS 3 customers are businesses that sell lightweight articles and their containers to foreign consumers and desire to offer their consumers a way to return those articles to the United States. Notice at 5.

The Postal Service will establish the effective date of the Contract as soon as the Commission completes its review. *Id.* at 3. The Contract is expected to remain in effect for two calendar years from the effective date, subject to early termination provisions. *Id.*

The Postal Service states that the Contract is functionally equivalent in all pertinent respects to the baseline agreement and is in compliance with the requirements of 39 U.S.C. § 3633. *Id.* at 4. The Postal Service therefore requests that the Contract be added to the IBRS 3 product grouping. *Id.* at 7.

## II. COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the Contract, and the supporting financial model that were filed under seal. Based upon that review, the Public Representative concludes that the Contract is functionally equivalent to the Baseline Agreement. In addition, it appears that the prices offered under the Contract should generate sufficient revenues to cover costs.

*Functional Equivalence.* The Postal Service asserts that the Contract shares similar cost and market characteristics as those of the Baseline Agreement. *Id.* at 2. However, the Postal Service does identify certain differences between the Contract and the Baseline Agreement. *Id.* at 5-6. Most of these differences are specific to the

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Governors' Decision 08-24 was filed as Attachment 2 to this request. An unredacted copy of Governors' Decision 08-24 was filed in the same docket under seal.

<sup>4</sup> See Docket Nos. MC2011-21 and CP2011-59. Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011 (Order No. 684). See also Docket Nos. MC2011-21 and CP2011-59, Request of the United States Postal Service to Add International Business Reply Service Competitive Contract 3 to the Competitive Product List and Notice of Filing of Contract (Under Seal), February 11, 2011. The redacted baseline agreement is included as Attachment 2 of this request. The Postal Service also filed an unredacted copy of this agreement separately under seal. (Baseline Agreement)

customer (e.g., the customer's name and address). Other differences between the Contract and the Baseline Agreement include revisions to paragraphs; revisions to numerous existing articles, as well as deletion, addition and renumbering of some articles; and revisions to Annexes 1 and 2. *Id.* The Postal Service maintains that these differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. *Id.* at 5.

The Public Representative agrees that the differences between this Contract and the Baseline Agreement do not fundamentally alter the services provided by the Postal Service under the Contract. Therefore, the Contract is functionally equivalent to the Baseline Agreement and thus qualifies for inclusion within the IBRS 3 product.

*Pricing Considerations.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices (1) must not result in the subsidization of competitive products by market dominant products; (2) must ensure that each competitive product will cover its attributable costs; and (3) must ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

As presented, the Postal Service's financial models do not directly address whether the addition of the Contract to the IBRS 3 product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service's financial models indicate that the negotiated rates in the Contract will generate sufficient revenue to cover its attributable costs over the two years lifespan of the Contract. Therefore, the addition of the Contract to the IBRS 3 product will not cause the product's cost coverage to fall below 100 percent, assuming the product currently covers its attributable costs. Under this assumption, the addition of the Contract should allow the IBRS 3 product to continue to comply with 39 U.S.C. § 3633(a)(2) and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Moreover, the addition of the Contract to the IBRS 3 product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service's institutional costs as required by 39 U.S.C. § 3633(a)(3). The Commission will have an opportunity to review

the financial results for the Contract in a future ACD Report for compliance with 39 U.S.C. 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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